

1 HARVEY P. SACKETT (72488)

2 **S A C K E T T**  
**AND ASSOCIATES**

3 A PROFESSIONAL LAW CORP.  
4 548 Market Street, Suite 38822  
5 San Francisco, California 94104-5401  
6 Telephone: (408) 295-7755  
7 Facsimile: (408) 295-7444  
8 Email: [hps@sackettlaw.com](mailto:hps@sackettlaw.com)

9 Attorney for Plaintiff

10 /as

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 KASSIE E. BENSON, ) Case No.: 4:19-cv-03447-JSW

14 Plaintiff, ) No. 20-17010

15 v. ) STIPULATION AND [PROPOSED]

16 KILOLO KIJAKAZI,<sup>1</sup> ) ORDER FOR THE AWARD AND  
17 Acting Commissioner of Social Security, ) PAYMENT OF ATTORNEY FEES  
18 Defendant. ) PURSUANT TO THE EQUAL  
19 ) ACCESS TO JUSTICE ACT, 28  
20 ) U.S.C. § 2412(d)

21 On March 2, 2022, the United States Court of Appeals for the Ninth Circuit issued an  
22 order reversing the final decision of the Defendant, Kilolo Kijakazi, the Acting Commissioner  
23 of Social Security (Commissioner), with a remand for a rehearing, 42 U.S.C. § 405(g)  
24 (sentence four); judgment was entered.

25 <sup>1</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to  
26 Rule 25(d)(1) of the Federal Rules of Civil Procedure Kilolo Kijakazi should be substituted, therefore,  
27 for Commissioner Andrew Saul as Defendant in this suit. No further action need be taken to continue  
28 this suit by reason of the last sentence of section 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

1           In the interest of administrative and judicial economy, the parties have agreed to  
 2 stipulate that an award of TWELVE THOUSAND TWO HUNDRED FIFTY DOLLARS  
 3 AND ZERO CENTS (\$12,250.00) in attorney fees under the Equal Access to Justice Act  
 4 (EAJA), 28 U.S.C. § 2412(d), is reasonable. Defendant shall also reimburse Plaintiff \$182.00  
 5 for copying costs pursuant to 28 U.S.C. 1920. This award is without prejudice to Plaintiff's  
 6 right to seek attorney's fees under section 206(b) of the Social Security Act, 42 U.S.C.  
 7 § 406(b), subject to the offset provisions of the EAJA. However, this award shall constitute a  
 8 complete release from and bar to any claims Plaintiff may have relating to EAJA fees and  
 9 costs. Further, such award shall not be used as precedent in any future cases, nor be construed  
 10 as a concession by the Commissioner that the original administrative decision denying benefits  
 11 to Plaintiff was not substantially justified.

12           After the Court issues an order for EAJA fees to Plaintiff, the Government will  
 13 consider the matter of Plaintiff's assignment of EAJA fees to Harvey P. Sackett ("Counsel").  
 14 Pursuant to Astrue v. Ratliff, 560 U.S. 586 (2010), the ability to honor an assignment will  
 15 depend on whether the fees are subject to any offset allowed under the United States  
 16 Department of the Treasury's Offset Program. After the order for EAJA is entered, the  
 17 Government will determine whether they are subject to offset. Fees shall be made payable to  
 18 Plaintiff, but if the Department of Treasury determines Plaintiff does not owe a federal debt,  
 19 then the Government shall cause the payment of fees, expenses, and costs to be made payable  
 20 directly to Counsel, pursuant to the assignment executed by Plaintiff. Any payments made  
 21 shall be delivered and made payable to Counsel.

22           Accordingly, Defendant agrees to pay Plaintiff \$12,250.00 in attorney's fees and  
 23 reimburse Plaintiff for \$182.00 in costs.

24           All parties whose signature lines appear in this document have consented to its filing.  
 25 This award is without prejudice to the rights of Sackett and Associates and/or Harvey P.

1 Sackett to seek Social Security Act attorney fees under 42 U.S.C. § 406(b), subject to the  
2 savings clause provisions of the EAJA.

3  
4 Dated: April 11, 2022

SACKETT AND ASSOCIATES

5 By: /s/ HARVEY P. SACKETT  
6 HARVEY P. SACKETT  
7 Attorney for Plaintiff  
KASSIE E. BENSON

8  
9 Dated: April 11, 2022

STEPHANIE HINDS  
United States Attorney

10 By: /s/DANIEL PAUL TALBERT  
11 DANIEL PAUL TALBERT  
12 Special Assistant United States Attorney  
13 Attorneys for Defendant  
[\*As authorized by email on 4/11/22]

14  
15 ORDER

16  
17 Pursuant to the stipulation, IT IS SO ORDERED.

18  
19 Dated: April 11, 2022

20  
21 HON. JEFFREY S. WHITE  
22 United States Senior District Judge

